

REMARKS/ARGUMENTS

Claims 1-35 are pending in the present application. Reconsideration of the claims is respectfully requested.

I. 35 U.S.C. § 102, Anticipation

The Examiner rejected Claims 1-35 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,944,786 to Kashyap. This rejection is respectfully traversed.

As evidenced by the attached declarations under 37 CFR § 1.131 and the accompanying exhibit of record, the present invention was invented prior to the effective date of the Kashyap reference, and diligently reduced to practice by the filing of the patent application on August 9, 2001. The disclosure, Exhibit A, is shown as being originally submitted on the date of April 17, 2001 and last modified on the date of May 1, 2001. The disclosure details the invention recited in at least independent claim 1 was conceived before the effective date of the patent to Kashyap. 35 U.S.C. 102(e) reads as follows:

A person shall be entitled to a patent unless -

(e) the invention was described in - (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The patent to Kashyap was not filed in the United States before the invention by the applicant. Kashyap also does not qualify as prior art under any other section of 35 U.S.C. 102 and, thus, does not constitute a statutory bar.

In this case, upon conception, the inventors filed an invention disclosure on April 17, 2001 (see Exhibit A attached hereto). The invention disclosure was then under review, and on May 7, 2001 outside counsel was contacted to begin preparation of the application disclosing and claiming aspects of the present invention (see Exhibit B attached hereto). Between May 7, 2001 and the filing date of the application, the application was in the process of being prepared by outside counsel. Since the instant patent application was (1) filed within four months from the original submission date of the Invention Disclosure and (2) the application itself was in a state of draft or review during a period of just over three of those four months, diligence is clear. Therefore, Applicants respectfully request withdrawal of the rejection of Claims 1-35 based upon the Kashyap reference.


Therefore, the rejection of Claims 1-35 under 35 U.S.C. § 102 has been overcome.

II. Conclusion

It is respectfully urged that the subject application is patentable over the cited reference and is now in condition for allowance. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

DATE: June 30, 2006

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian D. Owens", written over a horizontal line.

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